



PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Handwritten: 1/30/04
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In re application of

Docket No: Q63928

Toshio YAGIHASHI, et al.

Appln. No.: 09/825,337

Group Art Unit: 3627

Confirmation No.: 1780

Examiner: Gerald J. O'CONNOR

Filed: April 4, 2001

For: COMMERCIAL SALES SYSTEM AND METHOD USING NETWORK

APPELLANTS' BRIEF ON APPEAL UNDER 37 C.F.R. § 1.192

MAIL STOP APPEAL BRIEF - PATENTS

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Sir:

In accordance with the provisions of 37 C.F.R. § 1.192, Appellants submit the following:

I. REAL PARTY IN INTEREST

The real party in interest is NEC INFRONTIA CORPORATION by virtue of an assignment executed by Toshio YAGIHASHI and Shun-ichi SATO (Appellants, hereinafter) to NEC CORPORATION on March 16, 2001 and an assignment executed by Nagahisa Yuasa, Assistant General Manager of NEC Corporation, to NEC INFRONTIA CORPORATION on October 2, 2001.

II. RELATED APPEALS AND INTERFERENCES

On information and belief, Appellants, the Assignee, and the undersigned submit that there are no other appeals or interferences before the Board of Appeals and Interferences ("the Board") that will directly affect or be affected by the Board's decision in the present Appeal.

III. STATUS OF CLAIMS

Pending claims 1-15 stand finally rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over Tavor, U.S. Patent No. 6,070,149 ("Tavor"), in view of Bezos, et al., U.S. Patent No. 6,029,141 ("Bezos"). Therefore, claims 1-15 (*see* Appendix) are all the claims on Appeal.

IV. STATUS OF AMENDMENTS

An Amendment under 37 C.F.R. § 1.111 was filed and entered (as indicated in the final Office Action dated July 16, 2003) in response to the non-final Office Action dated February 20, 2003. In that amendment, claims 1-8 were amended and claims 9-15 were added. No amendments were made in responding to the final Office Action dated July 16, 2003.

V. SUMMARY OF THE INVENTION

The claimed invention relates to a commercial sales system and to a method utilizing the internet, or other network, to sell products over the internet that are related to a product sold by a primary vendor and offered for sale on a webpage of the primary vendor.¹

¹ See *e.g.*, Figures 1-11.

One of the goals recognized and attained by Appellants' claimed invention is that of creating a system of displaying products of more than one vendor on a single webpage. One product, a "specific item," (for example, a bicycle) of the primary vendor is the main focus of a webpage. Also displayed on the same page is a catalog including a number of links to related products, "relevant items," being offered for sale by secondary vendors. These vendors are "relevant-item vendors." These related products are products that are related to the primary product, but which are not sold by the primary vendor, and may be items that a purchaser interested in the primary product might also want to consider purchasing, such as athletic attire, helmets, or water bottles. According to an exemplary aspect of the Appellants' claimed invention, the primary vendor is credited with a sales commission when a purchaser follows a link from the webpage and buys one of the related products. Thus, a sales commission is provided to the primary vendor for facilitating the sale of the secondary vendor's product, even when the products are of different types.

As illustrated in the exemplary, non-limiting embodiment of Figure 1,² a commercial sales system includes a network such as the internet, and a sales server. The sales server stores one database, a "specific-item catalogue database," including information relating to the primary products (such as bicycles) and a second database, a "relevant-item catalogue database," including information relating to the related products (such as athletic attire, helmets, or water bottles). Another example of primary and related products are laptop computers and products

² See also p.7, lns. 1-16 of the application.

such as carrying cases or software, which may be used in conjunction with the laptop computers. The catalog of related items may contain links to many, for example 20 or 30, different related items offered for sale by as many different secondary vendors.³

The primary vendor and the secondary vendor are each connected to the internet.⁴ As mentioned above, the primary vendor and the secondary vendor are separate entities and generally do not sell the same types of products.⁵ The system further includes a purchaser computer also connected to the internet, used by the purchaser to purchase a product online. When the purchaser, connected to the internet through his computer, types in the uniform resource locator (URL) of the described webpage, the computer displays the webpage, including the primary product and the links to the related products.⁶ Because the webpage may display information on a number of relevant items, the purchaser can access the webpages of a number of secondary vendors simply by clicking on a link displayed on the primary webpage.⁷

When the purchaser, who has accessed the primary webpage, sees a relevant item that he is interested in, he can link to the webpage of the secondary vendor offering the relevant item for sale and can send a purchase request directly to the secondary vendor.⁸ The system illustrated in Figure 1 also includes a settlement computer having a number of sales accounts. There is one

³ *Id.*, p.7, ln. 23.

⁴ *See* Figure 1.

⁵ P. 7, lns. 12 and 21-23.

⁶ *See* Figures 1 and 2.

⁷ P. 8, lns. 1-2.

account for the primary vendor and one account for each of the secondary vendors. Once the purchaser has bought a related product, a commission is paid to the primary vendor. The payment of the commission can be made through the settlement computer by transferring the commission from the sales account of the appropriate secondary vendor to that of the primary vendor.²

Overall, the methods and apparatuses claimed in the present invention describe a system linking two online vendors and facilitating the transfer of potential customers from a primary vendor to a secondary vendor.

VI. ISSUE

The issue on appeal is whether or not finally rejected claims 1-15 are patentable over Tavor in view of Bezos, under 35 U.S.C. § 103(a).

VII. GROUPING OF CLAIMS

Group I includes claims 1, 5, 9, and 14, which all stand or fall together. Group II includes claims 2-3, 6-7, 10-11, and 15, which all stand or fall together as a group, and which recite patentably distinct features from the claims of Group I and III, as set forth in Section VIII. Group III includes claims 4, 8, and 12-13, which all stand or fall together as a group, and which recite patentably distinct features from the claims of Group I and II, as set forth in Section VIII.

⁸ P. 8, lns. 17-20.

² P. 8, lns. 21-25.

VIII. ARGUMENTS

Appellants respectfully request that the members of the Board reverse the rejections of claims 1-15 under 35 U.S.C. § 103(a) because a reasonable combination of the cited references, if any, fails to teach or suggest all of the claimed limitations. Additionally, Tavor and Bezos fail even to identify the problems solved by the Appellants' claimed invention.

The claims of Group I are patentable over a reasonable combination of Tavor and Bezos.

Tavor fails to teach or suggest all of the limitations recited in any of claims 1, 5, 9, and 14. Tavor is directed to a virtual sales representative which guides a purchaser through successive departmental webpages of a single vendor, thus facilitating the purchaser's online shopping experience.¹⁰ Tavor discloses only one vendor and fails to teach or suggest a second vendor.

Of claims 1-15 on appeal, claims 1, 5, 9, and 14 are all the independent claims. Each of claims 1, 5, 9, and 14 require at least two vendors: a "specific-item seller" and a "relevant-item seller." Each of the claims also requires that products of each of the vendors be displayed on a single webpage. Further, each of the claims requires transferring a sales commission from a sales account of one vendor to a sales account of a second vendor. Not a single one of these features, recited in each of claims 1, 5, 9, and 14, could possibly be found in the description of a system,

¹⁰ See Tavor, abstract.

like that of Tavor, having only one vendor. Each of these features requires and pre-assumes a system including at least two vendors: a “specific-item seller” and a “relevant-item seller.”¹¹

For at least the reasons presented above, Tavor fails to teach or suggest all of the features recited in any of claims 1, 5, 9, or 14.

Bezos fails to remedy any of the deficiencies of Tavor. Bezos is directed to an internet-based customer referral system, in which links to a vendor’s webpage are provided on an “associate’s” webpage.¹² According to Bezos, an “associate” may be, for example, an internet-based product reviewer or a recommendation service. Bezos fails to teach or suggest that the “associate” could be a product-vendor. Like Tavor, Bezos discloses only one vendor.

Further, as discussed above, each of claims 1, 5, 9, and 14 requires that the products of at least two separate vendors be displayed on a single webpage. Each of the claims also requires transferring a sales commission from a sales account of one vendor to a sales account of a second vendor. Neither of these features recited in claims 1, 5, 9, and 14 are found in Bezos. As mentioned, each of these features requires and pre-assumes a system including at least two vendors. Bezos specifically discloses that the website of the “associate” is an information dissemination system including marketing information such as product reviews or recommendations. According to Bezos, the “associate” is not a vendor, but rather a type of

¹¹ See Claims 1, 5, 9, and 14.

¹² See Bezos, abstract.

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information service. Therefore, none of the above-mentioned features of claims 1, 5, 9, and 14 could possibly be found in the Bezos description.

For at least these reasons, Bezos fails to remedy the deficiencies of Tavor with respect to claims 1, 5, 9, and 14.

Therefore, in view of the above, even if one of ordinary skill in the art would have been motivated to combine Tavor with Bezos (which Appellants do not admit), claims 1, 5, 9, and 14 are patentable over any combination of Tavor and Bezos. The resultant combination fails to teach or suggest each and every feature of the claimed invention. Specifically, there is no disclosure, teaching, or suggestion of a system having at least two product vendors, in which the products of each of the vendors are displayed on a single webpage, and in which a sales commission is transferred from a sales account of one vendor to the sales account of a second vendor. Further, in view of the above, claims 2-4, 6-8, 10-13, and 15 are patentable at least by virtue of their dependence on independent claims 1, 5, 9, and 14.

The claims of Group II are patentable over a reasonable combination of Tavor and Bezos.

In addition to the above-mentioned patentable features of claims 1, 5, 9, and 14, claims 2-3, 6-7, 10-11, and 15 further require, *inter alia* registering data relating to the purchase history of a purchaser and discounting the sales commission from a sales account of one vendor, the

“relevant-item seller,” to the sales account of a second vendor, the “specific item seller,” with reference to purchaser history data.¹³

In addition to the deficiencies of Tavor and Bezos, set forth above with respect to claims 1, 5, 9, and 14, neither Tavor nor Bezos, alone or in combination, teach or suggest the above-mentioned limitations recited in claims 3, 6-7, 10-11, and 15.

As discussed above, neither Tavor nor Bezos teaches or suggests a system having two product vendors where a commission is provided to one product vendor, the “specific item vendor,” for a product sold to a purchaser by a second product vendor, the “relevant item vendor.” Without such a system it is impossible for Tavor or Bezos to disclose discounting a commission from a second vendor to a first vendor based on registered purchaser history data, as recited in claims 2, 6, 10, and 15. Further, there is no suggestion in either Tavor or Bezos that such a limitation would have been obvious to one of skill in the art.

Additionally, neither Tavor nor Bezos teaches or suggests a first product vendor, the “specific-item seller,” requesting permission from a purchaser for the disclosure of purchase history data, and then, upon receiving permission, forwarding the purchase history data to a second product vendor, the “relevant item seller,” as recited in claims 3, 7, and 11. This limitation could not possibly be disclosed by a system without two distinct product vendors, since it requires one vendor obtaining the information and then forwarding the information to a

¹³ See Claims 3, 6,-7, 10-11, and 15.

second vendor. There is also no suggestion in either Tavor or Bezos that this limitation would have been obvious to one of skill in the art.

Therefore, in view of at least the above-presented arguments, Appellants respectfully submit that claims 2-3, 6-7, 10-11, and 15 are patentable over any combination of Tavor and Bezos.

The claims of Group III are patentable over a reasonable combination of Tavor and Bezos.

In addition to the above-mentioned patentable features of claims 1, 5, 9, and 14, claims 4, 8, and 12 further require, *inter alia* a discount requested by the purchaser and accepted by the second, “relevant-item,” vendor for an item purchased from the second vendor.¹⁴

The disclosures of Tavor and Bezos, failing to disclose or suggest a system having two vendors, do not render obvious, in a system having two vendors where a first vendor receives a commission based on a purchase price of an item purchased from the second vendor, a discount given by the second vendor to the purchaser. Such a discount necessarily effects a relationship between the first vendor and the second vendor. For example, the commission to the first vendor, based on the purchase price of the discounted item from the second vendor, is necessarily effected.

¹⁴ See Claims 4, 8, and 12.

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Therefore, in view of at least the above-presented arguments, Appellants respectfully submit that claims 4, 8, and 12 are patentable over any combination of Tavor and Bezos.

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Conclusion

For at least the reasons contained in this Brief, Appellants respectfully request that the Board reverse the Examiner's final rejection of claims 1-15 under 35 U.S.C. § 103(a).

The present Brief on Appeal is being filed in triplicate. Unless a check is submitted herewith for the fee required under 37 C.F.R. § 1.192(a) and 1.17(c), please charge said fee to Deposit Account No. 19-4880.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,


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WASHINGTON OFFICE

23373

CUSTOMER NUMBER

Date: January 16, 2004

APPENDIX

CLAIMS 1-15 ON APPEAL:

1. A commercial sales method via a network, comprising:

a step of registering in advance a specific-item catalogue relating to a specific item and a relevant-item catalogue for items relevant to the specific item in a home page on the WWW;

a step, performed by a purchaser, of viewing both the specific-item catalogue and the relevant-item catalogue on the home-page via the network through a purchaser terminal, and sending a purchase request to a relevant-item seller selling the items relevant to the specific item by designating one of the items relevant to the specific item so as to purchase the designated item;

a step, performed by the relevant-item seller, of delivering a product of the designated item to the purchaser according to the purchase request;

a step, performed by the relevant-item seller, of informing a settlement computer of sales data of the purchased item; and

a step, performed by the settlement computer, of transferring a sales commission from a sales account of the relevant-item seller to a sales account of a specific-item seller selling the specific item, the specific-item seller being different from the relevant-item seller,

wherein the specific-item catalogue and the relevant-item catalogue each comprise information about the item in addition to a link.

2. The commercial sales method as claimed in claim 1, further comprising:

a step of registering purchase history data in a database, where the purchase history data indicates the history of purchased items of the purchaser; and

a step of discounting the sales commission with reference to the purchaser history data registered in the database.

3. The commercial sales method as claimed in claim 2, further comprising:

a step, performed by the specific-item seller, of sending the purchaser a request for permitting disclosure of the purchase history data; and

a step, performed by the specific-item seller, of receiving permission of the disclosure of the purchase history data from the purchaser, and providing the purchase history data of the purchaser to the relevant-item seller.

4. The commercial sales method as claimed in any one of claims 1 to 3, further comprising:

a step, performed by the purchaser using a purchaser terminal, of sending the relevant-item seller a request for discounting the designated item on the home page; and

a step, performed by the relevant-item seller, of sending the purchaser an acceptance of the discount, and

wherein the purchaser purchases the designated item after the purchaser receives the acceptance of the discount.

5. A commercial sales system using a network, comprising:

a register section for registering in advance a specific-item catalogue relating to a specific item and a relevant-item catalogue for items relevant to the specific item in a home page on the WWW;

a specific-item seller for selling the specific item;

a relevant-item seller for selling the items relevant to the specific item, the relevant-item seller being different from the specific-item seller;

a purchaser terminal, operated by a purchaser, for viewing both the specific-item catalogue and the relevant-item catalogue on the home-page, and sending a purchase request to the relevant-item seller by designating one of the items relevant to the specific item so as to purchase the designated item, where the relevant-item seller delivers a product of the designated item to the purchaser according to the purchase request;

a settlement computer for receiving sales data of the purchased item from the relevant-item seller, and transferring a sales commission from a sales account of the relevant-item seller to a sales account of the specific-item seller; and

a network for connecting the register section, the purchaser terminal, the relevant-item seller, the settlement computer, and the specific-item seller with each other,

wherein the specific-item catalogue and the relevant-item catalogue each comprise information about the item in addition to a link.

6. The commercial sales system as claimed in claim 5, further comprising:

a section for registering purchase history data in a database, where the purchase history data indicates the history of purchased items of the purchaser, and

wherein the sales commission is discounted with reference to the purchaser history data registered in the database.

7. The commercial sales system as claimed in claim 6, wherein the specific-item seller includes:

a section for sending the purchaser a request for permitting disclosure of the purchase history data; and

a section for receiving permission of the disclosure of the purchase history data from the purchaser, and providing the purchase history data of the purchaser to the relevant-item seller.

8. The commercial sales system as claimed in any one of claims 5 to 7, wherein:

the purchaser terminal includes a section for sending the relevant-item seller a request for discounting the designated item on the home page;

the relevant-item seller includes a section for sending the purchaser an acceptance of the discount; and

the purchaser purchases the designated item after the purchaser receives the acceptance of the discount.

9. A commercial sales system connected over a network, comprising:

a register section configured to register specific-item catalogue information relating to a specific item and relevant-item catalogue information relating to an item relevant to the specific item, the register section registering the specific-item catalogue information and the relevant-item catalogue information in a homepage on the internet;

a purchaser terminal configured to enable a user to view both the specific-item catalogue information and the relevant-item catalogue information on the homepage, and to send a purchase request to a relevant-item seller module by designating the item relevant to the specific item so as to purchase the designated item;

a settlement computer configured to receive sales data of the designated item from the relevant-item seller module, and to transfer a sales commission from a sales account of the relevant-item seller module to a sales account of a specific-item seller module,

wherein the specific item is sold by the specific-item seller module, and the relevant-item seller module is different from the specific-item seller module, and

wherein the specific-item catalogue information and the relevant-item catalogue information each comprise information about the respective item in addition to a link.

10. The commercial sales system of claim 9, further comprising:

a registering section connected to register purchase history data in a database, the purchase history data including a history of purchased items of the user,

wherein the sales commission is discounted with reference to the purchaser history data.

11. The commercial sales system of claim 9, wherein the specific-item seller module includes:

a history disclosure permission section configured to send to the user a request to permit disclosure of the purchase history data; and

a permission receiving and history providing section configured to receive permission of the disclosure of the purchase history data from the user, and to provide the purchase history data of the user to the relevant-item seller module.

12. The commercial sales system of claim 9, wherein:

the purchaser terminal includes a section configured to send to the relevant-item seller module a request to discount the designated item on the homepage;

the relevant-item seller module includes a section configured to send to the user an acceptance of the discount; and

the user purchases the designated item after the user receives the acceptance of the discount.

13. The commercial sales system of claim 11, wherein:

the purchaser terminal includes a section configured to send to the relevant-item seller module a request to discount the designated item on the homepage;

the relevant-item seller module includes a section configured to send to the user an acceptance of the discount; and

the user purchases the designated item after the user receives the acceptance of the discount.

14. A commercial sales method over a network, the method comprising:

registering specific-item catalogue information relating to a specific item and relevant-item catalogue information relating to an item relevant to the specific item, the registering of the specific-item catalogue information and the relevant-item catalogue information performed in a homepage on the internet;

enabling a user to view both the specific-item catalogue information and the relevant-item catalogue information on the homepage, and to send a purchase request to a relevant-item seller module by designating the item relevant to the specific item so as to purchase the designated item;

receiving sales data of the designated item from the relevant-item seller module, and transferring a sales commission from a sales account of the relevant-item seller module to a sales account of a specific-item seller module,

wherein the specific item is sold by the specific-item seller module, and the relevant-item seller module is different from the specific-item seller module, and

wherein the specific-item catalogue information and the relevant-item catalogue information each comprise information about the respective item in addition to a link.

15. The commercial sales method of claim 14, further comprising:

registering purchase history data in a database, the purchase history data including a history of purchased items of the user,

wherein the sales commission is discounted with reference to the purchaser history data.